REDACTED—FOR PUBLIC INSPECTION

October 23, 2018

Ms. Elizabeth Drogula
Deputy Division Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Promoting Telehealth and Telemedicine in Rural America*, WC Docket No. 17-310 – FY2017 Rural Rates

Dear Ms. Drogula:

With this letter, TeleQuality hereby responds to questions posed orally by Telecommunications Access Policy Division ("Divison") staff. TeleQuality appreciates the opportunity to respond to staff's questions. Because this response contains commercially sensitive cost and pricing information, TeleQuality is submitting this information pursuant to a request for confidential treatment. In the event that confidential treatment is denied, we request return of this voluntarily submitted information.

We note that this information is only relevant, if at all, to rural rates for interstate services under the second sentence of 47 C.F.R. § 54.607(b). Rural rates set pursuant to the first sentence of 47 C.F.R. § 54.607(b), and any intrastate rates, are not affected by this information. Pursuant to Section 2(b) of the Communications Act, intrastate rates fall within the sole jurisdiction of the state public utility commission, as 47 C.F.R. § 54.607(b) expressly acknowledges. *See also Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 424, 446-448 (5th Cir. 1999) (rejecting argument that Section 254 unambiguously overrode Section 2(b)). Thus, we urge that USAC move forward expeditiously to issue funding commitment letters with respect to those funding requests.

We also note that by providing this information, we are not agreeing that it is necessary to an approval of TeleQuality's interstate rates. TeleQuality is a non-dominant interexchange reseller, for whom the Commission has forborne from ex ante tariffing. By definition, as a non-dominant carrier, TeleQuality lacks market power. *See* 47 C.F.R. § 61.19; *Hyperion Telecommunicatons Inc. Petition Requesting Forbearance*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 12 FCC Rcd 8596 (1997) ("[W]e have previously determined that [CLECs] are nondominant, and that nondominant carriers, 'by definition,' cannot exercise market power."); *Policy & Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order, 11 FCC Rcd. 20,730 (1996) ("[I]t is highly unlikely that interexchange carriers that lack market power could successfully charge rates, or impose terms and conditions, for interstate, domestic, interexchange services that violate Section 201 or 202 of the Communications Act, because any attempt to do so would cause their customers to switch to different carriers.") *See also* 47 C.F.R. § 61.201 (detariffing ILEC business data services). It also cannot plausibly have market power as a reseller, as the there are no substantial barriers to entry with respect to resold interexchange services. At every location, there is an underlying facilities-based carrier that could, alone or in conjunction with other carriers, provide these services to TeleQuality's customers.

All these interstate rates were the result of competitive bidding in which the rural healthcare provider selected the most cost-effective bid. As such, forcibly setting a different rate distorts the market and harms consumers. *See Nat'l Ass'n of Telecommunications Officers & Advisors v. Fed. Commc'ns Comm'n*, 862 F.3d 18, 25 (D.C. Cir. 2017) ("Rate regulation of a firm in a competitive market harms consumers.")

TeleQuality's response to the Division's questions, and the appendices thereto contain detailed information as to both TeleQuality's actual circuit costs and its actual overheads during the 2017 Funding Year, and thus contain business-sensitive confidential information. Pursuant to Sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457, 0.459, TeleQuality hereby requests confidential treatment of the attachment, which should be withheld from public inspection.

In support of this request, TeleQuality hereby states as follows:

1. Identification of Specific Information for Which Confidential Treatment Is Sought (Section 0.459(b)(1))

TeleQuality seeks confidential treatment with respect to the cost and revenue information contained in its responses to the Division's questions and associated appendices (the "Confidential Information").

2. Description of Circumstances Giving Rise to the Submission (Section 0.459(b)(2))

TeleQuality is disclosing the Confidential Information pursuant to 47 C.F.R. § 54.607(b)(1). TeleQuality needs to establish some of its interstate rural rates under the Telecommunications Program by submitting those rates to the Commission. As required by the rules, the submission must include "a justification of the proposed rural rate, including an itemization of the costs of providing the requested service." *Id.*

3. Explanation of the Degree to Which the Information Is Commercial or Financial, or Contains a Trade Secret or Is Privileged (Section 0.459(b)(3))

The information in the TeleQuality response to the Division's questions is commercial or financial and contains trade secret information. The responses include information regarding the costs TeleQuality incurs for circuits as well as TeleQuality's own costs to serve HCPs.

4. Explanation of the Degree to Which the Information Concerns a Service that Is Subject to Competition (Section 0.459(b)(4))

The market for the services at issue is subject to competition; the level of competition varies based on the element of the service and the specific location. Any carrier can bid to provide these services.

5. Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5))

First, disclosure of the information in the response would provide TeleQuality's competitors with sensitive insights related to TeleQuality's services and how it provisions its services to meet its customers' unique needs. Disclosure of this information would allow TeleQuality's competitors to use this information to determine TeleQuality's competitive position and associated revenues and thereby gain a competitive advantage. *Second*, disclosure of TeleQuality's Confidential Information would place TeleQuality at a competitive disadvantage, as TeleQuality lacks the same information regarding its competitors. *Finally*, disclosure of this information could harm the competitive bidding process in the RHC program.

6. Identification of Any Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6))

The Cost Justification has been kept private and internal to TeleQuality and its parent company. Each page of the attachment is clearly marked "TeleQuality Proprietary – Not for Public Disclosure".

7. Identification of Whether the Information Is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties (Section 0.459(b)(7))

TeleQuality has not previously disclosed to third parties, other than its counsel, its parent company, and relevant state commissions, any of the information in the Cost Justification.

8. Justification of Period During Which the Submitting Party Asserts that Material Should Not Be Available for Public Disclosure (Section 0.459(b)(8))

TeleQuality requests that its unredacted response to the Division's questions, including appendices, not be disclosed for 10 years from the date of this request. By that time, the sensitivity of TeleQuality's commercial information will have diminished, as market changes will render it increasingly dated, and would make it difficult for competitors to gauge TeleQuality's current market position and revenues.

Should you have further questions or require additional information in order to grant the requested confidentiality treatment, please contact me immediately so that I can provide further assistance to resolve this matter.

Sincerely,

John T. Nakahata
Counsel to TeleQuality Communications, LLC

Attachs.

TELEQUALITY RESPONSE TO TAPD QUESTIONS

1. Please show TeleQuality's working capital calculation.

Response: TeleQuality's estimated cost of capital in its cost justifications was based on the experience of its senior finance officer. In preparing this response, TeleQuality reviewed the FCC's working capital definition for rate-of-return local exchange carriers, which is not directly applicable. TeleQuality was also not clear as to the appropriate cost of capital to apply, since the Commission has not undertaken any hearings or rulemakings to define an appropriate cost of capital for a non-dominant interexchange carrier reseller.

****BEGIN CONFIDENTIAL**** [redacted]

[redacted] ****END CONFIDENTIAL****

2. Can TeleQuality allocate shared costs on a basis other than revenue?

Response: Yes. However, TeleQuality would point out that while changing the cost allocation method will shift shared costs among circuits, and thus change the margins attributable to individual circuits, with some decreasing and some increasing, it will not have a material impact on the total costs to be recovered or the aggregate returns because TeleQuality does not have customers other than rural healthcare providers. In calculating its shared costs percentage, TeleQuality used all revenues, not just eligible revenues, so it allocated a portion of shared costs to ineligible services. So even if there is a change in the total amount of shared costs that would be allocated to ineligible costs, it would be a miniscule difference (and could either add or reduce the total shared costs to be recovered from eligible services).

If TeleQuality were required by the Bureau nonetheless to revise its methodology for allocating shared costs, it could allocate those costs based on the directly assignable circuit costs to each customer. This would include circuit costs associated with any services deemed to be ineligible.

3. To the extent possible, update the determination of the shared costs factor for actual, rather than estimated Funding Year 2017 expenses.

Response: Attached is an updated determination of the shared costs factor, utilizing actual, rather than estimated Funding Year 2017 expenses, calculated as a percentage of revenues. Because calendar year 2018 books will not be closed and audited until early 2019, this is necessarily based, in part, on unaudited financials. TeleQuality notes that in the process of reviewing its actual expenses, it realized that some costs of sales had been excluded from circuit costs and not attributed to shared costs. That has been corrected in the attached updated listing of shared costs. *See* Appendix B.

Appendix C also provides the updated shared costs factor, utilizing actual Funding Year 2017, calculated as a percentage of circuit costs, rather than revenues. This implements the circuit cost-based allocation methodology described in the response to Question 2.

4. How, if at all, did TeleQuality allocate a portion of shared costs to ineligible services?

Response: As explained in the response to Question 2, when TeleQuality calculated its shared costs percentage, it divided total shared costs by total revenues from all services. In so doing, it automatically allocated a portion of its shared costs to any ineligible services. TeleQuality's calculation of a circuit costs allocator, includes all circuit costs, including ineligible costs, which allocates a portion of costs to ineligible services.

****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL****

5. How did TeleQuality determine its percentage of earnings for state income taxes?

Response: **BEGIN CONFIDENTIAL** [redacted]
****END CONFIDENTIAL**** *See* Appendix D.

Working Capital Charge at 10.75% per annum						
ILEC Prescribed Cost of Capital	[redacted]					
Working Capital Applicable to Rural Rate less Urban Rate					[redacted]	
Working Capital Monthly Cost						
Anticipated Months to payment						
(6 months approval delay + 1 month to						
process/receive payment)						
Working Capital Cost Factor Rural Rate						
Working Capital Applicable to Urban Rate						
Working Capital Monthly Cost						
Anticipated Months to payment						
(1 month payment cycle)						
Working Capital Cost Factor Rural Rate						
Total Working Capital Cost Factor per Revenue $						

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Category	Funding Year 2017 (7/2017 - 6/2018) Actuals
Personnel - payroll, benefits and payroll taxes	[redacted]
Operating - facilities, customer support, software, equipment, travel and insurance	
Administrative	
Bad debt expense	
Marketing	
Taxes and fees (other than income taxes)	
Total Revenues FY2017 (July 2017 - June 2018)	
Allocation Percentage (Revenues)	

Category	Funding Year 2017 (7/2017 - 6/2018) Actuals
Personnel - payroll, benefits and payroll taxes	[redacted]
Operating - facilities, customer support, software, equipment, travel and insurance	[redacted]
Administrative	[redacted]
Bad debt expense	[redacted]
Marketing	[redacted]
Taxes and fees (other than income taxes)	[redacted]
	[redacted]
	[redacted]
	[redacted]
Total Circuit Costs FY2017 (July 2017 - June 2018)	[redacted]
	[redacted]
Allocation Percentage (Circuit Costs)	[redacted]

State Tax Rate Support						
State	% of Business	Tax Rate	Wtd Avg			
TX	[redacted]					
AZ						
GA						
VA						
MS						
WV						
AL						
CA						
AR						
ID						
OH						
KY						
FL						
MO						
TN						
NM						
LA						
IL						
WI						
CO						
OK						
MT						
MN						
WA						
Weighted Average State Tax			[redacted]			

Note - Texas, Ohio and Washington use a gross receipts method and [redacted] is an estimated comparative rate vs other states.